



district.

4. Defendant is (a) registered to do business in the State of New York; (b) is doing business in the State of New York; (c) has transacted business within the State of New York and this judicial district; and (d) has committed tortious acts within the State of New York by offering for sale and selling infringing goods within the State of New York and this judicial district.

### **JURISDICTION AND VENUE**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1338 and the the Copyright Act, 17 U.S.C. § 101 *et seq.*,

2. Venue is properly founded in this district pursuant to 28 U.S.C. §§ 1391(b)(1), 1391(b)(2), 1391(c)(2) and 1400(a).

### **FACTUAL BACKGROUND**

3. King Zak manufactures and distributes party goods including among other things, disposable tableware such as plates, cutlery, dishes, bowls, cups, napkins and table covers (the “King Zak Products”). King Zak Products are offered for sale and sold throughout the United States over the Internet and in retail stores including, but not limited to, supermarkets, home goods stores, specialty stores, party stores and discount stores.

4. Among King Zak Products is the *Illuminations* collection which consists of a collection of disposable plates, cups, napkins and table covers displaying Chanukah themed artwork including menorahs and dreidels in a unique pattern or design (the “Illuminations Collection”).

5. King Zak Products feature unique designs or patterns that were created exclusively for King Zak Products and such designs or patterns constitute original works of

authorship, protectable pursuant to the laws of the United States and pursuant to international law including various copyright conventions and treaties the United States is a party to.

6. King Zak is the owner of United States Copyright Registration No. VA 1-910-463, entitled *Illuminations* for the Illuminations Collection. A copy of the Certificate of Registration and related deposit materials are annexed hereto as Exhibit A (hereinafter the “King Zak Copyright”).

7. The issuance of United States Copyright Registration No. VA 1-910-463 to King Zak constitutes prima facie evidence of the validity of the copyright and of the facts stated within the certificate.



8. As evidenced by the Certificate of Copyright Registration referenced above and attached hereto, the King Zak Copyright is in full force and effect and King Zak has duly complied with all requirements of the Copyright Act pertaining thereto.

#### **DEFENDANT’S WRONGFUL ACTIVITIES**

9. After King Zak introduced its original work of authorship contained in the King Zak Copyright into the United States market and after the date of its registration, Defendant infringed upon the King Zak Copyright by manufacturing, distributing, importing, offering for sale and/or selling in interstate commerce and within this judicial district, tableware products including, but not limited to, plates, cups, napkins and table covers, that infringe the King Zak Copyright (the “Offending Products”). A photograph depicting examples of the Offending Products is annexed hereto as Exhibit B.

10. The Offending Products use designs or patterns that have been copied directly from and are substantially similar in appearance to the Illuminations Collection that is protected under the King Zak Copyright.

11. Even a cursory review an example of the Offending Products to King Zak's copyrighted Illuminations Collection reveals that the Offending Products are virtually identical to the art protected by the King Zak Copyright:

The Offending Product	King Zak's Illuminations Plate
	

12. The Offending Products individual features and its overall configuration render Toys' Offending Products to be substantially similar to King Zak's protected art.

13. On information and belief, Defendant had knowledge of and access to King Zak's Illuminations Collection the prior to designing, creating, manufacturing, sourcing, and/or importing the Offending Products.

14. On further information and belief, Defendant knowingly and willfully designed the Offending Products (or directed the Offending Products to be designed) to be substantially similar to the Illuminations Collection.

15. Alternatively, on further information and belief, Defendant knowingly and willfully sourced, imported, and/or otherwise acquired the Offending Products due to its substantial similarity to the Illuminations Collection.

16. Accordingly, Defendant's development, reproduction, importation, distribution, advertising, marketing, sale, and offering for sale of the Offending Products infringes upon

Plaintiff's valuable and exclusive copyright.

17. On information and belief, Defendant promoted, advertised, marketed, sold, offered for sale, and shipped the Offending Products to consumers in this judicial district through its retail stores, its website <http://www.toys4usa.com/>, and Chanukah sales catalog, long after King Zak's sale and distribution of the Illuminations Collection and after issuance of the King Zak Copyright.

18. Due to the seasonal nature of the Offending Products and the immeasurable damage that King Zak will suffer as a result of the continued sale of the Offending Products, on December 12, 2016, Plaintiff's counsel sent a letter to the office of Defendant's president, via email and FedEx notifying Defendant of Plaintiff's valuable and exclusive rights in the Illuminations Collection, and alerting Defendant that its sale, production, distribution, and promotion of the Offending Products constitutes Copyright Infringement. Plaintiff's letter further requested that Defendant confirm that it would agree to cease promoting, displaying, distributing, offering for sale, and selling the Offending Products no later than 5:00 p.m. December 14, 2016.

19. Rather than responding to Plaintiff's letter, beginning on December 13, 2016, Defendant purposefully increased its promotional efforts with respect to the Offending Products by taking them from within its stores and placing them within sidewalk displays at the front of its retail stores as shown in the photographs below:



20. Defendant has profited and continues to profit from its unlawful use of the King Zak Copyright.

21. Consumers encountering both Plaintiff's Illuminations Collection and the Offending Products are likely to discern a substantial similarity between the Illuminations Collection products and the Offending Products.

22. Infringement by Defendant of the King Zak Copyright was, and continues to be, with the knowledge that the design copied from King Zak was original to King Zak, and Defendant, in doing or authorizing such acts, has infringed the rights of King Zak in the King Zak Copyright pursuant to the Copyright Act, 17 U.S.C. § 101 et seq. and such actions on the part of Defendant were deliberate and are willful.

23. King Zak has no adequate remedy at law.

**FIRST CLAIM FOR RELIEF AGAINST DEFENDANT  
(COPYRIGHT INFRINGEMENT)**

24. King Zak repeats and realleges the allegations set forth in paragraphs 1 through 23 above as if fully set forth herein.

25. King Zak has duly complied with all requirements of the Copyright Act with respect to the protection of the original works of authorship that are the subject of the King Zak Copyright.

26. Defendant has, without any license, consent or authority from King Zak, manufactured, distributed, imported, offered for sale and/or sold the Offending Products containing artwork that was copied from and is substantially similar in overall appearance to the original work of authorship that is the subject of the King Zak Copyright.

27. Without Plaintiff's permission, but with actual and constructive knowledge of King Zak's rights in the Illuminations Collection, Defendant improperly and unlawfully copied, reproduced, created derivative works of, adapted, displayed, marketed, sold, and/or distributed the Offending Products, in violation of the King Zak Copyright.

28. Accordingly, Defendant infringed the Illuminations Collection and King Zak Copyright with knowledge of and/or reckless disregard for Plaintiff's rights, as Defendant knew or should have known that its actions constituted infringement of Plaintiff's rights.

29. Moreover, Defendant's outright rejection of Plaintiff's rights after it received King Zak's December 12, 2016 letter and promotion of the Offending Products is a strong indicator that Defendant intends to continue copying, reproducing, creating additional derivative works of, adapting, displaying, marketing, selling, and/or distributing the Offending Products, in willful violation of Plaintiff's exclusive rights.

30. King Zak has not authorized, licensed or otherwise permitted Defendant to make any use of the King Zak Copyright for any purpose.

31. As a direct and proximate result of such infringement, Defendant has derived and received gains, profits, and advantages in an amount yet to be determined.

32. Pursuant to 17 U.S.C. § 504, Plaintiff is entitled to actual damages and any additional profits attributable to Defendant's infringing acts.

33. Pursuant to 17 U.S.C. § 504(c), Plaintiff is entitled to elect to recover an award of statutory damages in an amount up to \$150,000 as a result of Defendant's willful creation, sourcing, reproduction, distribution, and sale of derivative works infringing upon Plaintiff's rights as set forth in the King Zak Copyright. Moreover, Plaintiff is entitled to statutory damages in an amount up to \$150,000 as a result of Defendant's knowing, willful, and intentional reproduction, distribution, display, and sale of the Offending Products after the issuance of the King Zak Copyright.

34. Pursuant to 17 U.S.C. § 505, Plaintiff is entitled to its full costs of the action, including reasonable attorneys' fees.

35. Due to Defendant's infringing acts, Plaintiff has suffered significant and irreparable injury for which Plaintiff has no adequate remedy at law.

36. Unless enjoined by this Court, Defendant's infringement is likely to continue unabated, causing further irreparable injury to Plaintiff.



**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, King Zak Industries, Inc. prays for entry of:

1) A **FINAL JUDGMENT** that Defendant has willfully infringed Plaintiff's King Zak Copyright in violation of 17 U.S.C. §§ 106 and 501;

2) an **ORDER** enjoining Defendant and its officers, directors, agents, servants, employees, affiliates, members, parents, subsidiaries, and all those acting in concert or participation therewith, preliminarily and permanently, from designing, importing, distributing, promoting, displaying, offering for sale, and selling the Offending Products;

3) An **ORDER** enjoining Defendant and its officers, directors, agents, servants, employees, affiliates, members, parents, subsidiaries, and all those acting in concert or participation therewith, preliminarily and permanently, from infringing the King Zak Copyright.

4) A further **ORDER**

(a) requiring Defendant to account for all gains, profits, and advantages derived and accrued as a result of its infringement of the King Zak Copyright;

(b) assessing to Plaintiff an award of its actual damages, trebled, as well as all profits Defendant derived from infringing the King Zak Copyright;

(c) assessing to Plaintiff an award of statutory damages in the amount of \$150,000 due to Defendant's willful infringement of the King Zak Copyright;

(d) awarding to Plaintiff its attorney's fees, expenses and costs incurred in connection with this action as provided by 17 U.S.C. § 505; and

(e) assessing such other and further relief as the Court may deem just and proper.

Dated: December 15, 2016

HODGSON RUSS LLP

By: 

Neil B. Friedman  
Ryan A. McGonigle  
1540 Broadway, 24<sup>th</sup> Floor  
New York, NY 10036  
(212) 751-4300

*Attorneys for Plaintiff  
King Zak Industries, Inc.*

# **EXHIBIT A**

# Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Maria A. Pallante*

Register of Copyrights, United States of America

**Registration Number**  
**VA 1-910-463**

**Effective date of  
registration:**  
May 23, 2014

## Title

**Title of Work:** Illuminations

## Completion/Publication

**Year of Completion:** 2013

**Date of 1st Publication:** September 17, 2013

**Nation of 1st Publication:** United States

## Author

■ **Author:** Carrie Schonfeld

**Author Created:** 2-D artwork

**Work made for hire:** No

**Citizen of:** United States

## Copyright claimant

**Copyright Claimant:** King Zak Industries, Inc.

3 Police Drive, Goshen, NY, 10924, United States

**Transfer Statement:** By written agreement

## Certification

**Name:** Herb Zakarin

**Date:** June 20, 2014

**Correspondence:** Yes



















# **EXHIBIT B**



718-483-9379

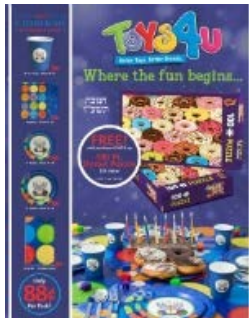
CATEGORY | AGE | BRAND | WHAT'S NEW | OUTLET

View Cart (0 items: \$0.00)

GO

FREE SHIPPING on orders over \$89. Oversized charges and restrictions apply.

Chanuka 2016!!!



## FEATURED PRODUCTS .....



100 Pc. Playmags Magnetic Blocks  
**Our Price: \$73.99**

Playmags 100-piece set includes a car base and eight different shapes!



Playmags Building MagnaBoard - Colors Vary  
**Our Price: \$14.99**



What a great accessory to any Playmags set...



Playmags Clear Color Magnetic Tiles Building Set 24 Piece Accessories Set  
**Our Price: \$19.99**



What a great accessory to any playmags set!



Playmags Remote Control Magnetic Car - Colors May Vary  
Our Price: \$27.99  
**Sale Price: \$30.00**



It's a unique and fun way to experiment with Playmags magnetic tiles!



Award Winning Playmags Clear Colors Magnetic Tiles Deluxe Building Set 150 Piece Set  
**Our Price: \$99.99**



NOW MORE VALUE THAN ANY OTHER SET!!



Playmags Clear Color Magnetic Tiles Building Set 48 Piece Accessories Set  
**Our Price: \$39.99**



What a great accessory to any playmags set!



playmags

Playmags Clear Color 2 Piece Car Set  
Our Price: \$12.99  
**Sale Price: \$12.00**  
**You save \$0.99!**



What a great accessory to any playmags set...



Playmags Clear Colors Magnetic Tiles Building Set 60 Piece Starter Set  
**Our Price: \$49.99**



The 60 piece Playmags Starter set includes new constructive pieces!

## Shop By Age



Toys4usa Proudly Carries Toys, Games, and Costumes  
From these Great Companies....



Toys4usa is Upfront

[My Account](#) | [Size Chart](#) | [Order Status](#) | [Policies & Guarantees](#) | [Shipping](#) | [Company Info](#) | [Customer Service](#) | [Privacy](#) | [Contact Us](#)

Copyright © 2016 Toys4usa. All Rights Reserved. Built with Volusion



MAKE  
**CHANUKAH**  
AFFORDABLE AGAIN!



88¢

9 oz. Cups - Pack of 16



88¢

Napkins - Pack of 20



88¢

7" Plates - Pack of 15



88¢

9" Plates - Pack of 10



88¢

54" x 96" - 1 Table Cover

Only

**88¢**

Per Pack!

# Toys4u

Better Toys. Better Brands.

## Where the fun begins...

חנוכה  
תשע"ז

**FREE!**  
with purchase of \$60 & up  
**100 Pc.  
Donut Puzzle**  
\$15 Value  
Limit 1 per family





